

The LEGAL MONITOR

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Workers fight destitution

HARARE-Farm workers, most of them migrant labourers, left destitute by the chaotic land reform programme are having their “inhuman and degrading treatment” under the spotlight again.

Mozambican descendent Binias Yolamu came to Zimbabwe as a young 24-year old in 1964 and has been a farm labourer since.

Three decades after the end of colonialism, Yolamu is battling to keep head above water and has had to approach the courts to intervene after being chased off the place he had called home for ages.

With nowhere else to go, having established his roots in Zimbabwe, a now elderly Yolamu is pinning hopes on the Supreme Court to end his misery.

Yolamu has made an application for referral of his matter together 84 other families to the Supreme Court challenging the constitutionality of some parts of the Gazetted Land (Consequential Provisions) Act, which he says has reduced him and other farm workers in his situation to “inhuman and degrading treatment.”

“The land reform process is a form of affirmative action meant to advance black economic empowerment,” his lawyers argue in court papers.

“It (land reform) was not envisaged to be a chief driver of leading poor farm workers into destitution by driving them off the farms from where they are employed without any form of recognition or terminal benefits to enable them to start a new life after investing their whole lives to working on a land that was subsequently gazetted.

“That, in our respectful view is not empowerment but forced destitution which could never have had been the intention of the legislature,” the lawyers argued in an affidavit deposed with the Magistrates Court last week.

Yolamu came to Zimbabwe from Mozambique as a migrant worker in 1964 and is among workers from Mgtutu farm in Mazowe facing charges of contravening Section 3 (2) (a) as read with Section 3 (3) of the Gazetted Land (Consequential Provisions) Act, [Chapter 20:28] “Occupation of Gazetted Land without Lawful Authority.”

This follows a complaint by a new farmer Kingstone Dutiro, who wants the employees of former farm owner Archie Black to leave Mgtutu farm. The State, led by Edmore Makoto, is now prosecuting the 85 workers.

The workers accuse the State of failing to protect them as enshrined in the Constitution of Zimbabwe.

Yolamu and his co-accused persons say they have nowhere else to go as they cannot trace their roots to Malawi or Mozambique where they are originally from.

Yolamu has been at the farm for 48 years as a worker.

“Neither Section 16, 16A, 16B of the Constitution of Zimbabwe, nor the Gazetted Lands (Consequential Provisions), Act [Chapter 20:28], contain such a provision terminating my contract of employment by mere virtue of the farm being gazetted,” Yolamu argues. “Being prosecuted in this matter for residing at a farm where I have been accommodated as a



Families facing eviction explaining their situation to their lawyer Jeremiah Bamu

consequence of my employment thereat is an act of constructive dismissal which I must be protected against at law.”

Yolamu – through lawyers – Lewis Urii, Jeremiah Bamu and Kennedy Masiye, argues that the land reform was meant to address colonial land imbalances and not infringe on labour rights.

“These laws (Sections 16, 16A and 16B of the Constitution and the Gazetted Lands (Consequential Provisions) Act, [chapter 20:28]), deal with ownership of land which is the subject of a farming enterprise. It does not deal with the individual relationships such as employment within the farming enterprise itself. To this end, these laws do not and must never be construed as interfering in any way with our labour rights,” says Yolamu. The group of former farm workers says since the departure of Black they “have lived in extreme and abject poverty that has been forced on us.”

The 72-year-old said: “These plot holders have made use of our services on various occasions and have failed to remunerate us for these services. This in our view could be the reason why they are now orchestrating for our prosecution in this matter. We submit that this is an abuse of court process for an employer to seek the prosecution of its employees simply because it is failing to pay such employees for services rendered.”

Harare Magistrate Lazarus Murendo is expected to hear the State’s opposition to the application for referral filed by the former farm workers. Prosecutor Makoto told the court that he would be opposing the application when the case resumes on Friday. Last week, Magistrate Murendo requested the

public gallery to be emptied to accommodate some of the 85 accused persons while the application was being made.

“It would be unfair for the accused, some of them being elderly and mothers with babies to be standing in court,” he said while appealing to court attendees to allow the accused persons to utilise the public gallery seats.

The 85 workers say they have not been paid since Black left.

“In addition to the non-payment of salaries due to us, we are no longer receiving the food rations we used to receive. We have lost access to clean drinking water as the water tanks and pipes were cut off from supplying our compounds. We no longer receive any assistance in sustaining or developing our accommodation structures. In short, we are being denied the right to a basic existence, which in our view amounts to inhuman and degrading treatment,” said Yolamu, who is the first accused person in the case.

“We do not believe that this was the government’s intention in embarking on the land reform exercise. We also do not believe that the government intended to push us from pillar to post in a desperate quest for a place where we and our families can lay our heads, especially when we have devoted our lives to hard work in order to follow an honest and decent existence.

“If this prosecution is allowed to proceed, these will be the results; we will be pushed out of employment unceremoniously after having served all our lives in that employment, in my case a record 48 years of continuous and loyal service, albeit with a decade of not being remunerated.”



Pondering... Tarisayi Papaya one of the affected workers

Muck on police over violence pictures

MASVINGO-Magistrate Dorothy Mwanyisa has acquitted the Zimbabwe Human Rights Association (ZimRights) and its senior official Joel Hita on charges of organising a photo exhibition in Masvingo showing the 2008 election brutality.

Last week Magistrate Mwanyisa upheld an application for exception to the charges filed on Monday by ZimRights lawyer Blessing Nyamaropa of Zimbabwe Lawyers for Human Rights (ZLHR).

In his application, Nyamaropa argued that the section under which ZimRights and Hita were being charged was repealed in 2007.

The State conceded to Nyamaropa's application and Hita and ZimRights - who had entered a not guilty plea when trial commenced - were duly acquitted by Magistrate Mwanyisa. They were represented by the organisation's national deputy chairperson Pelagia Razemba Semakweli.

ZimRights and Hita were charged under the harsh Public Order and Security Act for organising a photo exhibition in Masvingo in 2010 entitled "Reflections." The exhibition showcased pictures depicting

how Zimbabweans, particularly those viewed as Prime Minister Morgan Tsvangirai's supporters, were brutalised in 2008.

Meanwhile, Bulawayo Magistrate Tancy Dube last week quashed a police ban on some public meetings organised by Bulawayo Agenda in Tsholotsho and Lupane.

Bulawayo Agenda had on Monday 16 January given notification to the police regulatory authority for Lupane District in Matabeleland North province of their intention to hold two public meetings, whose agenda involved giving an update to the community on the ongoing constitution making process. The first meeting was scheduled to be held on Sunday 22 January at DDF Training Centre in Tsholotsho with the second planned for 28 January at Matshabalala Hall in Lupane.

But two days before the first scheduled meeting, police advised Bulawayo Agenda that they did not approve of all the two meetings without giving any reasons for the ban.

The police ban on the Bulawayo Agenda meetings compelled ZLHR senior projects lawyer, Lizwe Jamela, to institute urgent

proceedings in the form of an ex-parte application challenging the police veto of the meetings as they did not state cogent grounds for the prohibition.

Jamela also sought to interdict Lupane police and their agents or anyone acting under their instructions from disturbing or interfering in any way with the meetings to be held at Matshabalala Hall in Lupane on Saturday 28 January convened by Bulawayo Agenda, which was granted by Magistrate Dube.

Magistrate Dube sanctioned Bulawayo Agenda to proceed with the public meeting scheduled for the weekend and to reschedule and convene the meeting that did not take place on Sunday 22 January without giving any notice to the police.

This was in line with the organisation's right to freedom of assembly and association as set out in Section 21 of the Constitution and the right to freedom of expression as guaranteed in Section 20 of the Constitution.

Below, are some of the pictures (courtesy of ZimRights) which the police didn't want the authorities to be reminded of.



Inside prison walls

....MP speaks of child horrors

Chimanimani West MP, Hon. Lynette Karenyi, (LK) talks to *The Legal Monitor* (LM) about her prison experience over the last Christmas period. She was imprisoned at Mutare Remand Prison from 19 December to 28 December 2011 on accusations of calling President Robert Mugabe a homosexual who had enjoyed gay relations with former information minister Jonathan Moyo and the late President Canaan Banana. In the question and answer below, Hon. Karenyi speaks about her trauma at seeing the pain of children as young as nine-months old jailed with their mothers in the prison cells. Read on...

“Hey you, get your child to stop crying’ and the mother, out of frustration and depression just beats up the child”

LM: How did you take your imprisonment at such a time?

LK: I was prepared for the worst. I spent my 2010 Christmas in Hotsprings with my family. In 2011, I was in remand prison. But I knew this could happen because the tone of the police officers who summoned me to the station was very hostile. I was also alive to the history of prosecutors abusing their powers to keep politicians like me in remand prison.

LM: What kind of support did you receive in remand prison?

LK: Every morning I would see women, youths and men outside the prison. Prison guards were saying I could only see one visitor but the people kept coming even if they couldn't see me. It kept my spirit intact.

LM: What is your constituency's feeling about this?

LK: It was tough for them because of the memories of 2008 when I spent a year or two going to court on charges that I forged my nomination. They were worried I would not come back. So this was another experience and they were asking 'what is happening to our MP', and they would come to the prison even if I didn't have a chance to meet them personally, but they were with me always.

LM: Your ordeal comes as tensions escalate because of talk of elections in 2012. What is the mood in remand prison on this issue?

LK: Most of the inmates I talked to have this thinking that elections should be held as soon as possible, including those that are jailed on non-political matters. Most of them think a new government is most likely to grant them amnesty as a sign of new beginnings for Zimbabwe. But honestly speaking from a personal point of view, I think elections

this year would be premature. With these arrests and violence, it will become difficult to campaign. Even some sitting MPs will not be able to address even one rally in their constituencies. Those able to hold rallies might refrain from free speech fearing they will be arrested for saying anything against President Mugabe, who as a political rival is a legitimate target for attack at rallies by opponents like us. There must be more reforms, especially in the security sector.



A partisan security sector such as the one we have can only make things worse.

LM: You are expecting worse?

LK: Of course. The trend is not pleasing. How can one be arrested and charged with undermining the authority of the president when one probably didn't even say those words.

LM: What did you take from your stint in remand prison?

LK: Sad memories mostly. At Mutare remand, the food is horrible. Inmates get two small

slices of bread in the morning and boiled beans in the afternoon. And then you imagine someone is going to stay there a year or more. Health conditions are terrible. You share one bucket. If you ask the guards to bring you a bucket to use for a bath they tell you: 'No no no, you use the same bucket in your cell.' Bearing in mind that there are diseases, surely can one be expected to use the same bucket for bathing?



They are supposed to allow relatives to bring in buckets.

And inmates share one bathroom and being women you know every month there is this national duty and you need to use that one bathroom. I was sharing a cell with five women and three children and you have just your little space to fit.

LM: How did you feel as a mother sharing such conditions with innocent children?

LK: Up to now it is haunting me every day. There is one woman with a nine months-

old child. She wants to breastfeed until the kid is one year-old. Then maybe plead with her mother to look after the child. With the other one, I thought she will be coming out of prison soon with her child since the case was minor. She had been imprisoned for fighting. Then there was one child who turned three on 27 December (2011). The prison guards were asking the mother to take the baby home. But she told me her husband died when she was three-months pregnant and her sister took the child for only two months and returned the child.

“...How can one be arrested and charged with undermining the authority of the president when one probably didn't even say those words”

She asked me to look for an organisation that could take care of the child. Up to now I am yet to find one. The organisations I have approached tell me they only look after orphans. It is a real challenge.

LM: What are some of the situations these children live with daily in prison?

LK: Those kids experience hate in prisons. The language that people use in prison is vulgar and these children are growing in that sort of environment. They are a forgotten lot. Think of this small child, two or three years old, without enough clothes to change and no breakfast because the prison guards say they don't have shares for children. So if the mother gets two slices of bread she has to share with the child. The children only get porridge. Yet for a three-year-old, breakfast is necessary. We are abusing those children.

LM: You are in a position to influence things as MP?

LK: Talking from a Girl Child point of view, the government should formulate policies that are rigorously implemented to ensure children imprisoned with their mothers do not lose out. We should take care of these children. They have not committed any crime. Imagine, the baby is crying and other inmates are shouting: 'Iwe nyaradza mwana wako.' *Apa mai wacho nefrustration* ('Hey you, get your child to stop crying' and the mother, out of frustration) and depression just beats up the child. It is a challenge we have to overcome as political leaders and as a society.

LM: What have you been doing about it as an MP?

LK: I have approached chairpersons of the home affairs and justice portfolio committees in Parliament so they can also visit and pay more attention to prisons. In every jail there are children and something must be done.

Freedom for villagers

NYANGA-Hon. Douglas Mwonzora, the MP for Nyanga North constituency and over two dozen villagers from his constituency have been removed from remand on charges of allegedly assaulting ZANU PF supporters following an aborted meeting held in his constituency early last year. The villagers and the Constitution Select Committee co-chairperson were arrested early last year and charged with committing public violence in contravention of Section 36 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

Hon. Mwonzora and the villagers' removal from remand came after a spirited argument by defence lawyers led by Jeremiah Bamu of Zimbabwe Lawyers for Human Rights that the interests of justice did not require the continued placement of the accused persons on remand when the matter was pending in the Supreme Court. The lawyers further pointed out that the accused persons had discharged all they were required to do to ensure the matter is set down for hearing and it only remains upon the State to file its arguments in the Supreme Court. It was thus argued that the accused persons could not continue to be prejudiced through no fault of their own by being required to continuously incur expenses associated with coming to court on a frequent basis and causing an inconvenient disruption to their daily life routine as peasant farmers who needed time in their fields as they solely relied on subsistence agriculture for a living. The 33 accused persons have now been freed from the obligation of continuously appearing in the Magistrates Court until the Supreme Court has made a determination on this matter.

Below, *The Legal Monitor* gives a timeline of the suffering Hon. Mwonzora and the villagers, one of them dead, suffered at the hands of the police and prosecutors.

13/02/11 Hon. Douglas Mwonzora holds a constituency development fund feedback meeting at Chatindo Primary School grounds, Nyakomba in his Nyanga North Constituency.

The meeting is disrupted by rowdy ZANU PF youths claiming allegiance to Hubert Nyanhongo, who is reportedly eyeing the same constituency in the next elections. Violent clashes ensue. No immediate arrests are made by the police.

Later that night, ZANU PF youths begin rounding up perceived MDC supporters and illegally detaining them overnight at Taziwa Restaurant at Nyakomba Business Centre. They are subjected to severe assaults and torture. The late Headman Rwisai Nyakauru (then 88 years old) is among those illegally abducted. Taziwa is a ZANU PF supporter who runs a small business in Nyanga. The next morning, the kidnapped MDC supporters are handed over to police details from Nyamaropa Police Station.

14/02/11 ZANU PF youths continue rounding up MDC members and supporters.

15/02/11 Hon. Douglas Mwonzora is arrested as he exits Parliament Building in Harare on his way to fulfil an appointment with his doctor. He is taken to CID Law and Order Section at Harare Central Police Station and subsequently detained at Rhodesville Police Station in Harare without being given access to his medical doctor. He is only able to access his medication which he had on him and also brought from home.

The MDC supporters and members detained at Nyamaropa Police Station are transferred to Nyanga Police Station and their matter is now being handled by CID Law and Order at Mutare Central Police Station. Detective Inspector Chipangura is the appointed Investigating Officer in the matter.

16/02/11 Hon. Douglas Mwonzora is sneaked away to Nyanga in the early hours of the morning in a police attempt to evade his lawyers with whom they had arranged to meet at 08:00hrs to discuss the matter further.

He is detained for the night at Nyamaropa. The Officer in Charge at Nyamaropa Police Station denies that he is detained there. Fears begin to rise over his whereabouts.

17/02/11 Lawyers attend at Nyamaropa Police Station and note that Hon. Mwonzora is detained there after seeing him in the perimeter fence to the cells. They shout greetings at one another, in full hearing of the Officer in Charge before proceeding to see the Officer in Charge. The Officer in Charge now makes an about turn and confirms that he had been detained there overnight. He declines to grant the lawyers access to their client and in the middle of the discussions, Hubert Nyanhongo arrives. The Officer in Charge abruptly abandons his office from where he was meeting the lawyers and rushes to attend to Nyanhongo leaving the lawyers in his office. He later sends another police officer to eject the lawyers from his office and declines to entertain them any further.



The late Nyakauru and Hon. Douglas Mwonzora

18/02/11 Lawyers demand the appearance of their clients in court citing over detention. The police appear unwilling. The lawyers indicate they are proceeding to file an urgent chamber application for their clients to be taken to court or released. Having travelled almost sixty kilometres from Nyanga for these purposes, the lawyers are called back to Nyanga by the Police District Chief Investigating Officer. They hold consultations at around 16:00hrs in which it is confirmed that arrangements had been made for court appearance that day and ZESA had been given specific instructions not to effect its load shedding schedule to the court premises. Several complaints are raised against police in court. Bail is granted to all accused persons. The State invokes Section 121 of the Criminal Procedure and Evidence Act and the bail order is suspended.

25/02/11 The State files its appeal on the last day it was permitted to do so, after the accused persons had spent seven days in remand prison following their first court appearance. Oddly, the bail hearing is set for 04 March 2011 which is contrary to the High Court bail rules which require bail matters to be set down within 48 hours.

03/03/11 Lawyers for the accused persons file their response to the bail appeal. They cross check with the bail court roll for 04 March 2011 and to their shock and surprise, the matter does not appear on the roll. They are advised that the Attorney General's office did not leave a copy of the appeal in the court record and as such there was nothing to set down.

The lawyers engage the AG's office and a copy is returned to court, with a letter requesting that the matter be inserted onto the court roll as it had been set down for that day. Justice Yunus Omerjee, who was presiding over bail matters for that day, declined this request and said he was only dealing with matters appearing on the roll already submitted to him.

A letter of complaint is addressed to the Judge President Justice George Chiweshe, protesting at several irregularities taking place in this matter. The matter is subsequently set for 07 March 2011.

07/03/11 The matter is deferred to 09 March 2011 to enable a typed record of proceedings to be furnished to the bail appeal court.

08/03/11 The typed bail record is obtained from Nyanga Court and transmitted to the bail appeal court in Harare

The Judge President of the High Court responds to the letter of complaint dated 04/03/11, promising to look into

the complaints and revert back to the accused persons in due course.

09/03/11 The bail appeal is argued in court. Judgement is reserved to Friday 11 March 2011.

11/03/11 The appeal is dismissed and bail is confirmed. The bail orders are processed and rushed to Nyanga Court and the bail payments are made.

12/03/11 The accused persons finally taste freedom after being released from Mutare Remand Prison.

23/03/11 Accused persons applies for refusal of further remand. The State is given one more chance to furnish a trial date. Lawyers give formal notice of intention to request for referral of the matter to the Supreme Court for determination of the infringements of various fundamental rights.

16/04/11 Headman Rwisai Nyakauru passes away due to torture related illnesses while receiving medical attention in Waterfalls, Harare.

10/05/11 Accused persons apply for the referral of the matter to the Supreme Court and also apply for the release of a COPAC motor vehicle belonging to Hon. Mwonzora and being held by the police. Judgement is reserved to 23 May 2011.

23/05/11 The matter is referred to the Supreme Court and an order for the release of the motor vehicle is granted.

27/09/11 The AG files an application for the review of the Magistrates' decision to refer the matter to the Supreme Court.

11/10/11 The accused persons file their response opposing the application.

15/11/11 The Registrar of the Supreme Court sends a letter dated 11/11/11 requesting for the Accused to file their Heads of Argument in the matter referred to the Supreme Court.

22/11/11 The AG files an answering affidavit in the application for review.

The Accused write to the Judge President making a follow up on the outcome of their complaint.

06/12/11 Accused persons file their Heads of Argument in the Supreme Court.

26/01/12 Accused persons are removed from remand at the Nyanga Magistrate's court pending the final determination by the Supreme Court.